

## Analysis of the eradication of terrorism crime by detachment 88 in Indonesia

Jayadi Paputungan

### Abstract

*After the incident of the Bali bombing in 2002, its effects on the community anxiety about the criminal act of the terrorist. Because of that, The Government makes a Substitution Regulation Act No. 1 of 2002. Afterward, The Government demands Indonesian Police Chief to make Specific Detachment that called Densus 88, to carry out Regulations Act No. 5 of 2018 on the changes to the Act No. 15 of 2003 about "The Determination of Substitute Government Regulations Act No. 1 of 2002 Concerning The Eradication of Criminal Act Terrorism". Problem Formulations 1) How Densus 88 eradicate the criminal act terrorism? 2) How the actions form of Densus 88 in terms of the human rights side? Densus 88 is not under the applicable regulation, and the field fact shows that many terrorist suspects suffered injuries and even died, and it also against human rights. The research method used normative juridical method; law is seen as a binding rule. This research concludes that the action taken is not appropriate with the threats faced, and it is not under the law principle and law basis that should be. Besides, it carries out human rights violations which are harmful to the suspect and the terrorist defendant, then the lack of State responsibilities for things that happened.*

**Keywords:** Terrorism; Human Rights; Densus 88

### Author's Information:

Law Department,  
Universitas Muhammadiyah  
Yogyakarta, Indonesia  
([jayadi.paputungan27@gmail.com](mailto:jayadi.paputungan27@gmail.com))

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### 1. Introduction

All activities of community in the nation and state are regulated by law because Indonesia is a legal state as written in the Article 1 paragraph 3 of the State Constitution of the Republic of Indonesia that the form of the state of Indonesia is a state of law. In this case, the act of terrorism is very detrimental, dangerous, and threatens the security of the country, and then the terrorist action gets strict handling.

Not apart from this in the eradication of criminal acts of terrorism, law enforcement officials who demand criminal acts Specific Detachment that called Densus 88, to carry out Regulations Act No. 5 of 2018 on the changes to the Act No. 15 of 2003 about "The Determination of Substitute Government Regulations Act No. 1 of 2002 Concerning The Eradication of Criminal Act Terrorism". So that both it opposes terrorism and law enforcement authorities in approving criminal acts of terrorism have regulated this law.

Detachment 88 has prevented and overcame many cases of terrorism in Indonesia, but nowadays, Detachment 88 often reaps the pros and cons of the actions taken in eradicating terrorism. The eradication of terrorism carried out by Densus 88 often violates human rights, the occurrence of death against suspects and terrorism suspects, this then triggers and makes the public have a negative view of the actions taken, because there are not only one or two acts that deprive human rights but in every

handling there is excessive action and leads to death. For this reason, Detachment 88, as a special apparatus for dealing with terrorism, must provide a sense of comfort to the community, as an apparatus that protects, provides protection and services to the community. In line with this, Marcus Priyo Gunarto said that law enforcement officers who are the first entrance to a case are the police. Therefore, it is expected that the special police of Detachment 88 must be able to provide peace and comfort to the community when handling cases, including eradicating terrorism. Applicable, besides, there are several examples of terrorist cases dealt with Densus 88, such as the Siyono case and the fiddle for Solihin, which led to death and many cases that were not through trial.

In connection with this explanation, it can be seen that law enforcement by the Detachment 88 in the field has carried out many human rights violations, so that many community shops asking for Detachment are dissolved, not only that the international community takes into account the ways and actions of the terrorist eradication, so that an international amnesty comes out. Investigation of Densus actions that violate human rights a lot. For this reason, legal interpretation is needed, can determine the right decisions, and pay attention to the values contained in the applicable legal system, so that the legitimate objectives can be realized and achieved in terms of justice, legal certainty, and legal benefits.

Departing from the explanation above, the writer will analyze and examine the eradication of terrorism carried out by Detachment and all the dynamics that occur due to Densus actions in eradicating criminal acts of terrorism. so the author raised the title "ANALYSIS OF ERADICATION OF CRIMINAL ACTION BY DENSUS 88".

## **2. Methodology**

The research method in this paper is normative juried, which views the law as a binding regulation, refers to legal norms as outlined in-laws and regulations, legal principles, legal history, and jurisprudence. The approach in the normative juridical method uses a statutory approach, a case approach, and a historical approach. Normative legal research aims to produce arguments, theories, or concepts as prescriptions for solving problems.

## **3. Findings and Discussions**

### **3.1. Eradication of Criminal Acts of Terrorism Carried Out by Detachment 88**

After the incident of the Bali bombing in 2002, it affects the community anxiety about the criminal activities of the terrorist. Departing from this case then began to occur many cases of terrorism in Indonesia, which are increasingly rampant, through bombings that disturb, disturb, and threaten the security of the Indonesian nation. The government responded and took a quick step towards overcoming terrorist acts which then issued a Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Crime, Government Regulation in Lieu of Law Number 2 Year concerning Enforcement of Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Terrorism Crimes, then the President issued Presidential Instruction No. 4 of 2002 concerning Crime of Terrorism. After the enactment of some of these regulations in 2003, the Government Regulation in Lieu of Law Number 1 of 2002 was stipulated as Law Number 15 of 2003 on April 4, 2003 concerning Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Acts , which until now has been determined to be Law Number 5 Year 2018 concerning Amendment to Law Number 15 of 2003

concerning Determination of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law.

Based on this, the Government, in this case, the President ordered and asked the Chief of the National Police of the Republic of Indonesia (Kapolri) to form a particular unit to handle acts of terrorism. Based on the order of the President of the National Police, he then built a specific unit to deal with acts of terrorism, namely the Special Anti-Terrorism Detachment 88 called Densus 88. Through Skep Kapolri No. Pol: Kep / 30 / IV / 2003 / dated June 20, 2003, to implement Law No. 15/2003 concerning Stipulation of Perppu No. 1/2002 concerning Eradication of Crime of Terrorism. Detachment 88 carries out its duties and functions based on Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia. Then in the structural arrangement, Detachment 88 is under the Criminal Investigation Agency, commonly referred to as (BARESKRIM) National Police Headquarters (National Police Headquarters), in the execution of tasks led by the Detachment Commander with the rank of Police Brigadier assisted by Deputy Detachment. At the regional level (POLDA), Densus 88 is under the Directorate of Serse, which is usually called (Dit Serse), in the implementation of tasks led by the commander with the rank of middle police officer.

The police, including Densus, have a position that refers to Law Number 2 of 2002 concerning the National Police contained in CHAPTER II Article 6, Article 7, Article 8, Article 9, and Article 10. Law No. 2/2002 concerning the National Police considers that the maintenance of internal security through the implementation of police functions, namely support of security, public order, law enforcement, protection, protection, and community service, which is assisted by the community and upholds human rights. For this reason, in the Law in combating terrorism, we can see the police authority in general in Law No. 2/2002 as follows:

- a. Receive reports or complaints ;
- b. Helps resolves community disputes that can disrupt publics ;
- c. Prevent and overcome the growth of community diseases;
- d. Oversee the flow who can be division or variety of national unity;
- e. Issue police regulations within the administrative authority of the police;
- f. Carry out specific checks as part of police action in the context of prevention
- g. Take the first action on the scene;
- h. Taking fingerprints and other identities and shooting someones;
- i. Looking for information and evidence
- j. Organizing a national criminal information center;
- k. Issue a permit and certificate needed in the context of community service;
- l. Providing security assistance in the trial and implementation of court decisions, activities of other agencies and community activities;
- m. Receiving and storing found items temporarily.

In this regard, Detachment as an apparatus that acts specifically in the handling of terrorists has the authority of other members of the police contained in Article 16 Paragraph (1) of Law No. 2/2002 reads: making arrests, detention, searches and seizures

or prohibiting anyone from leaving or entering a crime scene for the purpose of investigation. Besides, the police, including Detachment 88, were given discretionary rights in Law No. 2/2002 Article 18 Paragraph (1) that is unilateral or personal decision making, and this action is justified based on paying attention to and considering the public interest. In line with these explanations, Wayne La Farve, in M. Faal's book, has the view that discretion is the role of individuals to make decisions and not fixated with the law so that in the sense of option can be done in circumstances that deviate based on individual judgment. Every action taken by Detachment is a legal action, which is regulated by law and then every step must be accounted for through law.

Furthermore, in Law Number 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, Article 26 states that Detachment has the authority to carry out initial arrests with preliminary evidence originating from Intelligence reports for seven times 24 hours. Then the amendment to Law No. 15 / 2003 stipulated as Law Number 5 Year 2018 concerning the Eradication of Criminal Acts of Terrorism, in Article 28 Paragraph (1), states that investigators can arrest people suspected of committing criminal acts of terrorism with initial evidence that enough for 14 days.

Also, Densus in carrying out acts of eradicating criminal acts of terrorism is based on the information they get and based on reliable information, as described in the previous paragraph. Then the purpose of intelligence reports is reports relating to national security issues. Then this intelligence report was obtained from several parties such as the Department of Foreign Affairs, the Ministry of Home Affairs, the Ministry of Justice, the State Intelligence Agency, the Indonesian National Army, and other related agencies. In the Terrorism Crime Eradication Act said that preliminary evidence such as intelligence reports could be obtained from several of these agencies. Furthermore, if we look at the general rules of the Criminal Procedure Code also use the term adequate preliminary evidence, this explanation is contained in article 1 point 14 that sufficient initial evidence is evidence of a criminal act so that this article shows that an arrest order cannot be arbitrary. But more clearly, it is aimed at those who are genuinely committing a crime.

Detachment 88 in dealing with criminal acts of terrorism other than stipulated in Law No. 2/2002, Law No. 15/2003, Law No. 5/2018, the process of proceedings on criminal cases uses Law Number 8 of 1981 concerning the Criminal Procedure Code. Then the duties and functions of Detachment 88 based on KUHAP Article 18 Paragraph (1) :

The execution of the arrest duties is carried out by the National Police of the Republic of Indonesia by showing a letter of assignment and giving a letter to the arrest warrant suspect that lists the identity of the suspect and mentions the reason for arrest and a brief description of the alleged crime case and where he was examined.

For this reason, based on these regulations, Detachment 88 has a legal basis in carrying out its duties and functions. But what is seen empirically in practice in the field shows different things, such as the occurrence of injuries to the suspect and the suspect until the death of the suspect or suspected terrorist who later this is considered as a form of abuse of authority.

We can see that the handling of terrorists carried out by the Special Detachment is often a force that does not reflect the apparatus are protecting and protecting the people but taking actions outside the applicable provisions. An apparatus can make coercion in handling criminal acts including Detachment in eradicating terrorists, but coercive actions can only be carried out in specific circumstances which require the apparatus to

take coercive measures such as suspected or defendants who make it difficult for the apparatus, so that the authorities can then do coercive action for further action. Besides, if we look more in-depth, activities that are often carried out by Densus are related to their authority to use firearms, Detachment does not have the power to use guns or shoot at the place. However, if we look at Article 48 of the Criminal Code, it is said that in certain circumstances and is very compelling, this can be done, for example, if the apparatus or Detachment does not shoot criminals such as hardline terrorists who disturb and disrupt the comfort of the community and the perpetrators can escape then officials were declared to have failed in carrying out their duties. Such a situation allows the apparatus or Detachment to use firearms to incapacitate perpetrators of crime. Then what in the actions taken by the authorities or Densus results in losses to one's soul or property based on Article 48 of the Criminal Code, which reads "whoever commits an act forced by an unavoidable power must not be punished." Thus the police action must be free from criminal acts, and then it makes the abuse of authority that often occurs in the eradication of criminal acts of terrorism by Detachment 88. It must be understood that Indonesian society is different from other countries, starting from ethnicity, race, and culture, Indonesian people highly respect and respect brotherhood, so to understand the situation and the condition of the community in handling terrorism crimes must use an emotional approach and not take actions outside their authority.

The next article that gives independent authority to the Detachment in carrying out its duties without being convicted is Article 50 of the Criminal Code, which states that "anyone who commits an act to implement the law cannot be punished." So that the rules and regulations that apply make the apparatus become immune from the law and cannot be blamed for based on implementing the law, which then does not pay attention to the fate of the suspect or the defendant.

### **3.2. The Form of Detachment 88 Action is Reviewed from The Side of Human Rights.**

Human rights are rights inherent in human beings since birth, and human rights must be respected by anyone, the state protects human rights, upheld, both in terms of the law, government and everyone must respect the rights of others for the sake of human dignity. Also, human rights inherent in a person are given the broadest possible freedom regardless of ethnicity, race, religion, sex, language, skin color, and nationality must be upheld by law and state. Related to this explanation, human rights are limited by several things that we can see in the Decree of the Indonesian People's Consultative Assembly (MPR) Number XVII / MPR / 1998 concerning Human Rights

Related to human rights in the eradication of terrorists by Detachment based on the Regulation of the Chief of the National Police Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of the Duties of the National Police of the Republic of Indonesia. In the regulation, it is said that in the process of carrying out the duties of service and protection of the community each member of the National Police is obliged and must pay attention to the proportionality of the actions of the officers that are balanced between the actions taken and the threats faced in law enforcement. Associated with the explanation of human rights, is related to the implementation of duties and activities carried out by Detachment 88 that the Detachment also has the same rights, but can be seen from the execution of tasks carried out by Detachment in practice in the field far from the expectations and provisions in force. Eradication of terrorism often occurs in death and



makes the suspects or defendants suffer injuries and physical disabilities after being handled by the Detachment.

In the process of handling terrorism, the authorities, in this case, the Detachment, must pay attention to and fulfill the alleged rights or defendants of terrorists. Also, actions must be taken on the principle because the legal process, which must be under the rules, policies and fulfillment of participation rights, is also expected by the defendant.

Because of the fundamental thing about each person is the right to life and the right to live life. For that, every decision of action and steps taken must be genuinely balanced. Suspects and suspects should be placed and enforced under human values, but besides, it is also said that legal principles must be upheld and may not exclude or ignore human rights that occur in any suspected or suspected terrorist. In line with this, Kunarto said that the actions taken must see and consider the human rights inherent in everyone, to realize the legal goals of creating justice for the people.

Densus actions in carrying out their duties and authority in practice get a lot of criticism and cons from various parties. Then some things are always contradictory in operations carried out by Detachment that are not under the duties and provisions, two of which are often criticized, namely repressive actions and actions that lead to the extrajudicial killing of some people suspected of being terrorists. Furthermore, in its implementation, the eradication of terrorists is not only one or two wrongful arrests, but many have taken place wrongly, examples of cases that were unlawful arrests were the suspected terrorist Siyono which led to death without undergoing legal proceedings, arguing that in the process of handling Siyono resistance to the authorities while on the way so they must be dealt with more forcefully, so Siyono must lose his life. This example has represented and proved that the actions taken had violated several rules and provisions in eradicating terrorism, one of which is human rights violations. Not only that, the handling is suspected, whose status has not been proven to be suspected as a perpetrator of a crime that has taken a hard step, a step to kill the person. Firm actions are indeed needed in handling terrorists, but over-responsive attitudes and actions provide negative judgments that have an impact on human rights.

Suspected terrorism is an unexpected one that cannot be said by terrorist perpetrators, and it is suspected that it can be said that the perpetrator has been proven through the court and has a fixed decision. For this reason, the apparatus carried out the initial arrest so that they could be questioned so that the handling process was indeed under the provisions and upheld the rights of the suspect and the victim. From this, the next problem is the action of the authorities in this case the Detachment in handling terrorists takes arbitrary steps without regard to rules and regulations as they should, which should uphold human rights and the principle of presumption of innocence on suspected terrorists, so that Densus actions are deplorable and far from the expectations of various parties, especially the community.

Regardless of the explanation above, Detachment must be able and must finalize the information received before taking action, so that the handling process can ensure that the target or target is targeted according to the data or not. Related to the information received by the Detachment, it is also closely related to the parties providing information, especially such as the State Intelligence Agency (BIN), where the body is very closed and confidential. Therefore the information provided must be accurate and reliable because many cases are misappropriated, the wrong target, which then harms the target party. In connection with this, Rusli, in his book, said: "the order

to arrest a terrorist suspect should not be carried out arbitrarily, but must be directed to those who committed a crime, contained in the explanation of Article 17 of the Criminal Procedure Code." In the law to eradicate criminal acts of terrorism, it has also been said that investigators can arrest people suspected of being based on sufficient initial evidence for a maximum of 7 x 24 hours, Article 26 Paragraph (2) of Law No. 15/2003 Juncto (Jo) Article 28 of Law No. 5/2018, which then has no further regulation regarding arrest, so that there is confusion in articulating this.

Many cases occur, and every situation handling often occurs excessive or arbitrary actions by the authorities, for this reason, Densus as part of the state apparatus so that in each case handled and experienced death and illegal arrest the state must be responsible for the actions taken. In the applicable rules and regulations related to eradicating terrorism, many benefiting the authorities and not seeing how unexpected or the fate of the suspects who have undergone an unfair law enforcement process, the significant role of the government must be fully responsible. So far, in every eradication of terrorism, the responsibility of the state is not visible because if the country is fully accountable, there are rarely deaths and injuries to the suspect or suspect in the law enforcement process carried out by the authorities in this case Detachment 88. In the Criminal Procedure Code, the rights of victims, such compensation can be seen in CHAPTER XII, which is about compensation for Article 95-97, which must be fulfilled when there is an error in the process of handling terrorism, but what happens in practice is no responsibility and compensation.

#### **4. Conclusion**

The implementation of terrorism carried out by Detachment 88 is regulated by Government Regulation in Lieu of Law Number 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism, then the President issued Presidential Instruction Number 4 of 2002 concerning the Criminal Act of Terrorism. After the enactment of some of these regulations in 2003, the Government Regulation in Lieu of Law Number 1 of 2002 was stipulated as Law Number 15 of 2003 on April 4, 2003 concerning Government Regulation in Lieu of Law Number 1 of 2002 concerning Eradication of Terrorism Criminal Acts, which until now has been determined to be Law Number 5 Year 2018 concerning Amendment to Law Number 15 of 2003 concerning Determination of Government Regulation in lieu of Law Number 1 of 2002 concerning Eradication of Criminal Acts of Terrorism into Law. In its process and actions the Detachment is also regulated in Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia and the Regulation of the Chief of the National Police Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of the Duties of the National Police of the Republic of Indonesia. The actions taken by each counterparty act of terrorism are not in accordance with the standard operating procedures that have been set in several regulations that have been explained in the discussion, the actions taken are not in accordance with the threats faced, not in accordance with the principles and legal principles which should be fair so that legitimate objectives can be realized without discrimination and over-treatment.

In terms of human rights, it can be seen that the occurrence of human rights violations is often the case, carrying out arbitrary actions that result in losses to the suspect and the accused. Then the apparatus that should protect and provide comfort in upholding the law in practice far from what is expected, ignoring human rights violates

the police code of ethics and violates the Regulation of the Chief of Police Number 8 of 2009 concerning the Implementation of Human Rights Principles and Standards in the Implementation of Tasks of the Indonesian National Police. Many misunderstandings occur, because they lack maturity in the information received so that there are many significant losses to suspected terrorists, besides that there is no responsibility from the state for actions taken by the Detachment, the state should be fully responsible for the losses experienced by terrorism suspects, the rule should be more strict in keeping an eye on that. In addition, with the existence of regulations that benefit the authorities, making them feel as if they don't feel guilty about actions that are often carried out because they always argue that their actions are right and cannot be blamed, so they are said to be immune because they have strong reasons, namely implementing laws and regulations .

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